IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
APPELLATE SIDE.

CRIMINAL APPEAL NO. 758 OF 1997

The State of Maharashtra ..... Appellant

versus

Deelip @ Deelipsingh Vyankatrao Mohite ..... Respondents

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Shri B.H. Mehta APP for the appellant.
Mrs. Pranali P. Kakade for the respondent – appointed.

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CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATED : 11TH AUGUST, 2005

ORAL JUDGEMENT (Per Palshikar, J.) :

1. Being aggrieved by the judgment dated 30-8-1997 passed by the III Additional Sessions Judge, Kolhapur in Sessions Case No. 64 of 1997 appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

2. With the assistance of the learned advocate appearing on

behalf of the appellant and the learned APP, we have srcutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

3. The prosecution case as emerges on reappreciation of evidence stated briefly is that the victim was residing in a place in Kolhapur city initially owned by Smt. Vijaymala Rani Sarkar and afterwards was with the accused amongst others. Accused wanted the victim Anandrao to vacant the premises in his occupation and therefore there was pre-existing enimity between the accused and the victim because of the occupation of the room by the victim. On 7-12-1996 according to the prosecution around 10.00 p.m. the victim Anandrao was put to death by means of assault with an axe. Police suspected the accused and was therefore arrested and investigation was conducted. The prosecution examined 9 witnesses to prove its case which was solely circumstantial evidence and the learned trial Judge on appreciation of this evidence proceeded to acquit the accused. Hence this appeal by the State.

4. There is no dispute on the fact that the entire case depends on appreciation of circumstantial evidence. According to the prosecution, with the help of 9 witnesses examined and the various panchanamas, the prosecution has established beyond doubt the guilt of the accused. According to the defence, there are several links missing in the chain of circumstantial evidence. There is no recovery of the weapon as contemplated by law and there is therefore, no connection between the death and the accused. We have to consider these contentions in the light of the evidence as it stands.

5. P.w 1 Kiran Kalyankar proves the panchanama of attachment of the articles belonging to the deceased. Nothing turns on this panchanama. P.w. 2 Arun Wadkar proves the arrest of the accused which is not disputed. P. w. 3 Tanaji Patil is the brother of the deceased, who has given out the circumstances in which the victim was living in the disputed house. P.w. 4 Sagramsing Mohite is the brother of the accused. P. w. 5 Rajaran Shinge was pujari in Bhavani temple on the ground floor of Rajawada. P.w. 6 Vishwanath Kadam

is also occupant of Rajawada. P.w. 7 Shamrao Jadav is another brother of deceased Anandrao. It is he who has lodged the FIR. He proves it as Exh.17. P.w. 8 Suvarna PSI who arrested the accused and P.w 9 Bhimrao Chache is the investigating officer. The circumstances, which are proved by the prosecution are:

a) That there was enimity between the accused and the victim.

b) The enimity was because of occupation of a room by victim against the wishes of the accused.

c) Accused also was residing in the same premises

d) A blood stained axe was recovered but it has come in evidence that at the time of this recovery, the accused was hang up and it cannot therefore be said to be a voluntary recovery as contemplated by section 27.

6. If this recovery is excluded, the circumstances proved are grossly inadequate to come to the conclusion that the death of the victim was caused by the accused only.

7. It is an accepted position of law that to sustain a conviction, on the basis of circumstantial evidence, the prosecution must prove the

complete chain of circumstances, leading to death. We have already observed what has been proved by the prosecution. Even the recovery is held proved. There is nothing to connect the accused with the crime as the prosecution has not proved the circumstances of the accused handling the axe in any manner. In the absence of any ocular testimony that the killing was done by that axe and by the accused, merely because the axe is recovered at the instance of the accused, it would be unsafe to sustain the conviction as contended by the prosecution. In our opinion, the learned Judge has rightly appreciated the evidence on record and was legally justified in acquitting the accused. In any event, in our opinion, this is not a case where this court in its appellate jurisdiction should interfere with the order of acquittal, which is well reasoned, supported by evidence and law. In the result, therefore, the appeal fails and it is dismissed,.

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